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CURRENT TOPICS

Continuance of Emergency Legislation

WE noted under this heading at p. 718, *ante*, the passing of motions for addresses to continue in force certain emergency enactments and regulations which were due to expire on 10th December, 1951, unless continued in force by Orders in Council. The necessary orders have now been made, viz.: the Supplies and Services (Continuance) Order, 1951 (S.I. 1951 No. 2116), and the Emergency Laws (Continuance) Order, 1951 (S.I. 1951 No. 2117). The former extends the operation of the Supplies and Services (Transitional Powers) Act, 1945, until 10th December, 1952, with results which were set out in our previous note on this subject, and it is here only necessary to remark that, after some doubt and uncertainty, nothing has apparently been done to prevent the continuance in operation of Defence Regulation 68CA, which restricts the conversion of housing accommodation to use for non-residential purposes, although it was stated to be the Government's intention to allow it to lapse when the motions for addresses were debated. The effect of the order is to continue *en bloc* the Defence Regulations which have effect by virtue of the Act of 1945, of which regulation 68CA is one. Nevertheless, certain of such regulations have been specifically revoked by the Defence Regulations (No. 4) Order, 1951 (S.I. 1951 No. 2113), and are not therefore kept in force by the Supplies and Services (Continuance) Order; the regulations affected are of minor interest and need not here be specified, but regulation 68CA is not among them. The other principal order, the Emergency Laws (Continuance) Order, similarly continues until 10th December, 1952, certain provisions of the Emergency Laws (Transitional Provisions) Act, 1946, the most notable of which for the legal reader is s. 9 (as to the Evidence and Powers of Attorney Act, 1940, and the Settled Land and Trustee Acts (Courts' General Powers) Act, 1943), and a number of Defence Regulations kept alive under the 1946 Act and specified in the Schedule to the order. Some of these regulations are, however, amended by the Defence Regulations (No. 5) Order, 1951 (S.I. 1951 No. 2115), and are thus continued in a slightly altered form. Finally, it should be mentioned for completeness' sake that the continuation of certain temporary provisions relating to patents and designs mentioned in our note at p. 718, *ante*, is effected by S.I.'s 1950 Nos. 2122 and 2123.

Expediting Grants of Representation

NOTES agreed between the Council of The Law Society, the Controller of the Estate Duty Office and the Principal Probate Registrar, published in the December issue of the *Law Society's Gazette*, aim to produce a substantial saving of time. The notes state that land and chattels as well as unquoted stocks need not be accurately valued, but if a genuine effort at stating a fair value has been made the Estate Duty Office will usually accept payment of duty on this basis subject to a corrective affidavit at a later date. In reference to other aggregable property a statement of the approximate value will avoid an inquiry to establish the rate of estate duty

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provisionally payable on the Inland Revenue affidavit. Special consideration will be given to urgent cases, e.g., where a public-house is concerned and questions of licensing arise. The Principal Probate Registry is also prepared to give consideration to requests for special expedition. Solicitors can also obtain speedy notification as to a grant being ready for collection by leaving a stamped addressed post card with the papers at the Registry. In the vast majority of cases where solicitors send cheques for the estimated amounts of estate duty and interest when forwarding Inland Revenue affidavits for assessments (addressing the papers to the Accountant-General (Cashier) at Minford House, Rockley Road, West Kensington, W.14, and not to the Estate Duty Office), a provisional assessment at the amount offered is made and the papers returned to the solicitors duly stamped.

Death Duties: Revocation of Double Duty Relief in relation to Pakistan

In the case of deaths occurring on or after 5th December, 1951, it will no longer be possible to claim United Kingdom death duty relief under s. 20 of the Finance Act, 1894, in respect of property situate in Pakistan. That section, as is well known, provides for relief from double duties on property situate in British possessions to which the section is applied by Order in Council, being countries which do not levy duty on property situated in the United Kingdom or in which a reciprocal allowance is made. It is understood that the present death duty law of Pakistan charges duty in certain circumstances on property in Great Britain or Northern Ireland, but does not provide any allowance in Pakistan in respect of duty paid in Great Britain or Northern Ireland on that property, and for this reason it has become necessary to revoke the Order in Council (dated 2nd February, 1895) which applied s. 20 to "British India" so far as it relates to Pakistan. The Order of 1895 remains operative, of course, in relation to India as distinct from Pakistan. The orders effecting this change are the Death Duties (Revocation of Relief against Double Duty) (Pakistan) Order, 1951 (S.I. 1951 No. 2129) and the similarly named order relating to Northern Ireland (S.I. 1951 No. 2130).

Extra-Statutory Concession by Estate Duty Office

Attention is drawn in the December issue of the *Law Society's Gazette* to a recent extension of an extra-statutory concession made by the Estate Duty Office, with regard to a house owned and occupied by the deceased. The general rule is to take the market value at the date of death. In the case, however, of a house owned and occupied by the deceased, where a near relative of the deceased who was ordinarily resident with him at the date of death remains in the house and has no other available place of residence, any increase in the market value above the pre-war value is disregarded in so far as it could only be realised by a sale with vacant possession. The valuation made on that basis would, it is stated, be reviewed if the house were sold or let within a reasonable period of, say, two years after death. Where it is sold within two years of death and the proceeds are wholly utilised by the relative in the purchase of another house for his own occupation, the modified basis of valuation will not be disturbed. Where they are only partly so utilised estate duty is charged on the proceeds, subject to a deduction to the extent to which the purchase price of the second house is attributable to the premium for vacant possession. The Controller states that attention will always be called in relevant cases to the extension of the concession.

Postponement of New Rating Valuation Lists

It has been increasingly evident for some time that the task of local valuation officers in preparing new valuation lists for rating purposes by the primary dates specified in s. 34 of the Local Government Act, 1948, could not be fulfilled. Under that section the new lists were to come into force on 1st April next (or 6th April in the case of London), with a proviso enabling the Minister to postpone these dates for a year in relation to any particular rating area. Thereafter, new lists were to be made so as to come into force on 1st April, 1957, and each fifth subsequent year. It had already been announced in the House of Commons on 2nd August, 1951, that valuation officers would concentrate on properties other than houses since it had proved impossible to secure the requisite qualified staff to complete all the revaluations in time, and the Minister has now made an order (the New Valuation Lists (Postponement) Order, 1951 (S.I. 1951 No. 2105)) under s. 34 (3) of the Act postponing all the relevant dates by one year. The effect is thus that the new lists are now due to come into force in April, 1953 (or April, 1954, in relation to particular areas if so directed by the Minister), and subsequent lists in April, 1958, and quinquennially thereafter.

Legal Aid

Two valuable notes in the December issue of the *Law Society's Gazette* give guidance on difficult points arising out of the legal aid scheme. The first is to the effect that costs should be prayed in a petition presented by an assisted person unless, had the petitioner been an unassisted person, he or she would have been advised to omit a prayer for costs, and that it would normally be the duty of the petitioner's legal advisers to apply for an order for costs if the petitioner is successful, in order that the legal aid fund may be protected. The second note states that no leave of the area committee is required where papers have been delivered to counsel A who has taken one step in the proceeding but is unable to continue and returns the papers, which must then be delivered to counsel B. The rule requiring the assent of the area committee where it is sought to employ two counsel does not apply to this case.

Vendor's Solicitor and Unrepresented Purchaser's Signature

The Council of The Law Society has laid down principles for the guidance of solicitors in deciding the difficult question of the propriety in an individual case of a vendor's solicitor inviting a purchaser to sign a contract for the purchase of land (other than at an auction) before the purchaser has instructed a solicitor. The first principle (p. 486 of the December issue of the *Law Society's Gazette*) is that it is desirable that a purchaser be represented by a solicitor before a contract is signed. Secondly, it is stated that it is improper to ask the purchaser to call at the vendor's solicitor's office where a considerable measure of agreement has been reached, unless the purchaser is already a client of the vendor's solicitor. The normal practice is to write to the purchaser asking to be put in touch with his solicitor. The third principle is that where the vendor has given specific instructions to obtain the purchaser's signature at the earliest possible moment, this must be communicated to the purchaser, together with an explanation of what is the normal practice. Normally, a solicitor acting for a vendor or purchaser must limit his communication to a request for the other party's solicitor or to a request that the other party should instruct his solicitor to communicate with the writer.

CRIMINAL CAPACITY IN CHILDREN

A CERTAIN Sunday newspaper, sometimes spoken of (we are confident, inaccurately) as the equivalent of Holy Writ among females engaged in licensed victualling, recently reported a case in a juvenile court where the solicitor defending a boy aged thirteen referred to the presumption that a child under fourteen was *prima facie* incapable of forming the intention to do wrong. The report was followed by a short article by a "legal correspondent," who pointed out that such presumption must be rebutted and, before there can be a conviction, it must be proved that the child knew what he was doing and knew that it was wrong.

This appears to be an adequate statement of the law. Halsbury, Vol. 9, p. 18, puts it as follows:—

> "If an infant between the age of eight and fourteen years commits an act which in the case of a person over fourteen years of age would amount to a felony or to some other offence of which *animus malus* is an essential ingredient, there is a presumption of law that the infant had not sufficient capacity to know that what he did was wrong; but this presumption may be rebutted by evidence, and on such evidence being given the infant may be criminally liable. Knowledge that he was doing what was wrong cannot be presumed from the mere commission of the act, but may be proved by the circumstances attending the act and the manner in which it was done."

There follows a reference to the irrebuttable presumption that a boy under fourteen cannot be guilty of rape or carnal knowledge.

Clarke Hall and Morrison on Children, 3rd ed., p. 58, puts it thus:—

> "The old presumption that a child between eight and fourteen has not reached the age of discretion and is *doli incapax* must still be borne in mind. This presumption is, however, rebuttable by strong evidence of a mischievous discretion.
>
> *Malitia supplet aetatem.* In practice, it will be found that a child of average intelligence shows a capacity for knowing good from evil; but the presumption should be borne in mind when a charge against a child involves guilty knowledge and it is not obvious that such guilty knowledge must have existed."

By the Children and Young Persons Act, 1933, s. 50, it shall be conclusively presumed that no child under the age of eight years can be guilty of any offence. Where children under eight do engage in serious criminal activity, they can properly be brought before a juvenile court as being beyond their parents' control, under s. 64.

The cases dealing with the criminal capacity of children are set out at pp. 53-54 of Vol. 14 of the English and Empire Digest. One of them, *R.* v. *Dean* (1629), is distressing indeed, for a boy aged eight, who had set fire to two barns, was found on examination to have malice, revenge, craft and cunning and was hanged accordingly. Two Dominion cases also are cited; in one of them it was held that a child aged twelve charged with selling bread without a licence should not be convicted unless there was proof that he knew that he was doing a forbidden act. In the other it was held that, where a child aged eight was charged with conspiracy, the jury must be told that they can only convict on strong and pregnant evidence that he knew the nature and consequences of the offence.

Were the legal correspondent of the Sunday newspaper to have been content with the statement which is mentioned above, there would be little point in discussing the matter further. He continued, however, firstly by referring to the fact that last year 37,094 children under fourteen were convicted of offences and giving his opinion that in comparatively few of the cases were the principles of the law observed. Secondly, he went on to say that, though many children plead guilty, in law they are incapable of crime and a plea of guilty is invalid.

It is submitted that the first statement is exaggerated and the second is wrong in law. The principle that a child is *doli incapax* is perfectly well known in the juvenile courts. As Halsbury states, knowledge that a child was doing wrong can be proved by the circumstances attending the act and the manner in which it was done, and Halsbury cites in a note evidence of design, concealment, or exceptional ferocity. The juvenile court does not have to enter into a prolonged examination of each child's mind and mental processes to find out if he has malice, revenge, craft and cunning. The circumstance that he waited for the assistant's back to be turned before taking something from the counter and then hid it or that he told lies when questioned or ran away from the police will generally suffice to show that he knew he was doing wrong. ("Exceptional ferocity," happily, is generally not found in our juveniles.) To suggest that the great majority of the 37,094 children convicted last year were wrongly convicted and that there was no such evidence as has just been outlined in their cases is surely a great exaggeration.

It is further submitted that it is perfectly proper for a plea of guilty to be taken from a child. In the first place, r. 7 of the Summary Jurisdiction (Children and Young Persons) Rules, 1933, requires the court to ask the child or young person whether he admits the charge, after it has been explained in simple language. Rule 11 also refers to pleas of guilty by a child. Many juvenile courts also ask the child if he knew what he did was wrong. When a child has admitted the offence, the court will generally hear from the facts outlined by the prosecution some indication of circumstances of design or concealment but, should no such indication be forthcoming, the child can always be advised in a proper case to change his plea. Instances where children are charged with offences of absolute liability or of such offences as conspiracy are rare; where such charges are brought against children, then indeed the court should be vigilant to see that the presumption of insufficient capacity is rebutted. Again, where wilful damage is charged and only recklessness is shown, the court should make certain that the danger of injury to the property in question was present to the child's mind.

Experience in the juvenile courts suggests that Clarke Hall and Morrison were correct in saying that children of average intelligence know the difference between right and wrong and also suggests that in felony cases there is frequently evidence of design or concealment as well. It is submitted that the "Serious Allegations against Juvenile Court Magistrates" (as the newspaper in question might well have headed its column) are unfounded and that there is little reason to suppose that the law is not correctly interpreted and applied throughout the country.

G. S. W.

A Conveyancer's Diary

CHANGE OF INVESTMENT: TENANT FOR LIFE'S POWERS OF DIRECTION

AMONG the many intricate questions of estate duty law considered by the House of Lords recently in *St. Aubyn (L.M.) v. A.-G. (No. 2)* [1951] 2 All E.R. 473 was a point of some interest on the law of trusts. It was this: Is it competent for a tenant for life under a settlement operating under the Settled Land Act, 1925, to direct the trustees to change an investment of capital moneys into another investment authorised by the Act or by the settlement?

This is a question which turns wholly on the construction of certain provisions of the Settled Land Act, 1925, and it arose in the somewhat alien atmosphere of the *St. Aubyn* case in the following manner. The St. Aubyn estate consisted of, amongst other things, certain freehold lands and certain investments representing capital money arising under a settlement. By the terms of the settlement the settled property stood limited, subject to a joint overriding general power of appointment in the tenant for life and P, upon the usual trusts under which the tenant for life had a life interest with various remainders over. It appears that the tenant for life was minded to reduce, so far as possible, the incidence of estate duty on the settled property, and to this end initiated a series of transactions which were made possible by the exercise of the joint general power of appointment and of which the broad result was as follows. An estate company was formed, and the whole of the settled property was transferred to the company in consideration of the payment by the company to the settlement trustees of certain sums of cash, some immediately, some by instalments. The sums of cash payable immediately by the company were then used by the trustees to pay for a number of shares in the company allotted to the trustees. The tenant for life and P then exercised their joint general power to appoint that the sums payable by instalments by the company should belong to the tenant for life absolutely, in substitution for his life interest in the whole of the settled property, and that the shares in the company purchased by the trustees should remain in settlement. The effect of this transaction, so far as the beneficial interests of the various persons interested in the settled property was concerned, was that the sums of cash payable by instalments became the absolute property of the tenant for life, and that he was excluded from all beneficial interest in the property which remained settled, i.e., the shares in the company held by the trustees.

To achieve this result without committing a breach of trust it had been necessary for two deeds to be executed. By the first deed the tenant for life and P, in exercise of their joint general power, authorised the trustees of the settlement, amongst other things, to invest capital moneys in the purchase of shares in the estate company. By the second deed the tenant for life as tenant for life directed the trustees to invest the capital moneys subject to the settlement in the shares of the company on certain specified terms. It was the effect, from a certain point of view, of this deed of direction which led to the question concerning the powers of a tenant for life stated above.

This is a skeleton outline of the facts in this case, but it is sufficient for the present purpose. The tenant for life survived the transactions above described by more than three years (the statutory period for estate duty purposes applicable in this case), but on his death estate duty was nevertheless claimed on or in respect of the shares in the company which had remained in settlement alternatively under s. 43 of the Finance Act, 1940, and under s. 46 of that Act. The former claim does not concern us, and being strictly alternative may be completely disregarded.

A claim to estate duty under s. 46 arises where a person had made to a company to which the section applies a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accrued from the company to the person who made the transfer in the three years before his death. The tenant for life, as will be seen, had transferred property to the estate company, the company was admittedly a "controlled" company of the kind to which s. 46 applies, and the tenant for life had received benefits, in the shape of instalments of cash, from the company in the three years before his death; and it was thus claimed, in accordance with the method of calculation provided by the section, that a proportion of the company's assets corresponding to the benefits received by the tenant for life in the three-year period should be included in the tenant for life's estate for estate duty purposes.

I have said that one of the transactions in this scheme consisted in the transfer of all the settled property to the company. The mode of transfer followed the usual precedents, i.e., the conveyance of the settled land took the form of a grant by the tenant for life in exercise of his Settled Land Act powers and of the extended powers given him by the settlement and by the deed by which investment of the settled property in shares of the company had been authorised; and the investments representing capital moneys had been transferred to the company by the settlement trustees. These were the transfers of property on which the Crown relied as satisfying the principal condition of s. 46, viz., that there should have been a transfer of property to the company by the taxpayer. It was argued against the Crown that these transfers had been made in a fiduciary capacity, so as to fall within the exception provided by this section.

As to the conveyance of land, no real difficulty arose: the conveyance had been made by the tenant for life in pursuance of powers possessed by him in that capacity, and the conclusion was quickly reached that this transfer of property was excepted from the section. But the transfer of the investments was a matter of greater difficulty. The trustees in making this transfer had no doubt acted in a fiduciary capacity, but they had acted on a direction of the tenant for life, and for the purposes of a transfer within the meaning of s. 46 it is provided by s. 58 (2) of the Act of 1940, in effect, that a transfer is to be deemed to be a transfer of a person who directs it, even if it is actually carried out by another. On this footing the transfer by the trustees became the transfer of the tenant for life, and in relation to this particular transfer, so regarded, there arose the question whether the tenant for life, in notionally making it, had acted in a fiduciary capacity or not. If the tenant for life was competent to direct this transfer under the Settled Land Act or under his extended powers, then clearly this transfer had also been made in a fiduciary capacity in exactly the same way as the transfer of the settled land had been made in a fiduciary capacity; and it was in this way that it fell to the House of

Lords to determine the question relating to a tenant for life's powers of directing a change of investment which is set out at the head of this article.

The relevant portions of the Settled Land Act, 1925, are as follows:—

"73.—(1) Capital money arising under this Act . . . shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes . . .

(i) In investment in Government securities, or in other securities in which the trustees . . . are . . . authorised to invest trust money of the settlement, with power to vary the investment into or for any other such securities . . .

75.—(1) Capital money . . . shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into court at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the court, as the case may be, accordingly.

(2) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof according to the direction of the trustees . . .

(3) The investment or other application under the direction of the court shall be made on the application of the tenant for life, or of the trustees.

(4) Any investment or other application shall not during the subsistence of the beneficial interest of the tenant for life be altered without his consent.

* * * * *

(7) Those securities may be converted into money, which shall be capital money arising under this Act."

On these provisions it was argued, on the one hand, that the tenant for life, having under s. 75 (2) directed the application of capital money in the mode first mentioned, viz., in investment in authorised securities, has no power to direct a change of investment into other authorised securities, that the power to vary rests with the trustees, and that though under s. 75 (4) they cannot exercise that power without the consent of the tenant for life, he has no power of direction. On the other hand it was argued that just as the tenant for life has the initial power of direction and the further power (which was not denied) of directing that an investment should be realised and the proceeds applied in some authorised mode of application, e.g., in discharge of incumbrances, so he has power to direct that an investment shall be realised and the proceeds invested in other investments; in other words, that the words "with power to vary" in s. 73 (1) (i) do not confer upon the trustees a power apart from the tenant for life, but merely indicate that the right of the tenant for life to direct is not exhausted when he has directed that the mode of application of capital money shall be investment in securities.

The second of these two views was accepted by the House of Lords. In Lord Simonds' view, it would be both illogical and inconsistent with the scheme of the Settled Land Act to give to the tenant for life the right to say whether capital money should be applied in investment in securities or in some other mode of application provided in s. 73 (1), and the right to direct the sale of securities and the application of the proceeds in some other mode, but to deny him the right to direct a variation of investment.

The result of the decision on this point did not, ultimately, benefit the taxpayer in the case under review, since it was held by a majority of the House that the Crown were entitled to succeed on another footing, but the construction of the relevant provisions of the Settled Land Act in a sense which gives the tenant for life power to direct a variation of an investment was adopted unanimously. Provided, therefore, that a tenant for life acts within and according to his powers, whether those are the statutory powers or the extended powers conferred on him by the settlement, he is at liberty to direct the settlement trustees to realise an investment of capital money and invest the proceeds in another investment of his choice.

"A B C"

Landlord and Tenant Notebook

RIGHTS OF A STATUTORY TENANT'S TENANT

DENNING, L.J., concluded his judgment in *Lewis* v. *Reeves* [1951] *2* All E.R. 855 (C.A.) with the observation: "I expect that, as a result of this case, lawyers will advise daughters how to get protection by taking a sub-tenancy." But quite a number of points were gone into in the course of the case, in which possession was claimed of part of a protected dwelling-house. The whole house had originally been let to one R; we are not told when, but his contractual tenancy had been determined and replaced by a statutory one when he died in 1945 and his widow became a, or the, statutory tenant. In November, 1949, she purported to sub-let part of the house to the defendant; he was the original tenant's grandson, but this made no difference to the result of the action for possession, brought against him on her death. Realising, no doubt, that in the face of the decision in *Summers* v. *Donohue* [1945] K.B. 376 (C.A.) residence with the deceased—even if he could, in view of the sub-letting, be said to have resided with her—would not qualify him for a tenancy under the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*), which has been held to effect a transmission once only, he invoked s. 15 (3) of that statute: "Where the *interest* of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, *or for any other reason*, any sub-tenant to whom the premises or any part thereof have been *lawfully* sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued." The italics foreshadow the answers. The plaintiff first contended that "determination" of the mesne tenant's interest was limited to cases in which an active step had been taken (presumably notice to quit given, or surrender, but I suggest that expiration by effluxion of time might have been allowed without prejudice to the force of the argument), and part of his argument was that it was this that made the reference to judicial proceedings intelligible. On this the court held that the "for any other reason" extended the protection to cases in which the interest of the mesne tenant terminated by reason of his death, indicating their view that express reference to orders of court might have been added to make it clear that what followed would apply in such cases. An order for possession, it may be remembered, operates *in rem*: it is the duty of the sheriff or bailiff to turn everyone out (see *Green* v. *Herring* [1905] 1 K.B. 152 (C.A.)).

But had the deceased had "an interest"? Here, perhaps, the plaintiff had more to say; for the mesne tenant had occupied by virtue of her rights as widow of a statutory tenant. It could be plausibly argued that as *Summers* v. *Donohue* had shown that there could be no second transmission by virtue of s. 12 (1) (*g*) there must be some distinction between the position of a first statutory tenant and a second statutory tenant, and if the first one had an "interest" (which appears to have been conceded) for s. 15 (3) purposes the second one had not. The court, however, examined s. 15 (1), which describes, rather than defines, the conditions of what is called (in the marginal heading) a "statutory tenancy." "A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act . . ."; and held that a widow who retained possession because she fell within the definition of "tenant" in s. 12 (1) (*g*) was in the same position as a tenant who remained in possession after his tenancy had determined. On this, it was held that the deceased widow had had an interest which had determined. While it is clear that there was no reason to draw any distinction (except as regards the further transmission incident) between such a set of rights as she had enjoyed and those enjoyed by her husband since the determination of his contractual tenancy, I respectfully suggest that this does not fully support the proposition advanced, namely, that the words "the interest of a tenant of a dwelling-house to which this Act applies" in s. 15 (3) cover such "interests."

The question whether a "section 12 (1) (*g*) tenant" can sub-let does not appear to have been hotly contested, if at all; in the judgment of Somervell, L.J., the learned lord justice mentions three authorities: *Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.); *Summers* v. *Donohue, supra*; and *Oak Property Co., Ltd.* v. *Chapman* [1947] K.B. 886 (C.A.) as bearing on the point, and, indeed, the first-mentioned decided the point in the sub-tenant's favour, after a very thorough examination of the whole position. The second decision, which (approving *Pain* v. *Cobb* (1931), 146 L.T. 13) was to the effect that there could be no second "transmission" on death by virtue of s. 12 (1) (*g*) of the 1920 Act, was said not to affect the point in issue; and *Oak Property Co., Ltd.* v. *Chapman*, though at one stage Somervell, L.J.'s judgment characterised the interest of the sub-tenant concerned as "spectral," followed *Roe* v. *Russell* and was merely mentioned in the recent case as one in which the question of the effect of sub-letting the whole of the premises was left open. So it had been in *Roe* v. *Russell*; and before that in *Keeves* v. *Dean* [1924] 1 K.B. 685. But I submit that *Regional Properties, Ltd.* v. *Frankenschwerth* [1951] 1 All E.R. 178 (C.A.) has brought us a little nearer to a solution, that suggested in the "Notebook" of 27th October last being that even the sub-tenant of the whole of the premises may have some spectral interest, but that para. (*d*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933—sub-letting of the whole without the landlord's consent a ground for possession—may facilitate exorcising in apt cases.

Denning, L.J.'s suggestion or apprehension is, of course, that the widow of a protected tenant occupying by virtue of s. 12 (1) (*g*) of the 1920 Act, being aware of the effect of *Pain* v. *Cobb, supra*, but anxious to benefit a daughter (or someone else), should "get round" the effect in question by sub-letting part of the house to the intended beneficiary. Indeed, there would be a further advantage: if the widow did not survive her grant by six months, it would not matter. I venture to suggest, however, that sub-tenancies of the kind visualised will be subjected to close scrutiny with a view to ascertaining whether they are genuine or sham sub-tenancies, and something will be heard of *Conqueror Property Trust, Ltd.* v. *Barnes Corporation* [1944] K.B. 96 and its "the letting referred to in the Rent Restrictions Acts obviously means a real letting, etc." (Macnaghten, J.).

R. B.

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HERE AND THERE

GRAY'S INN HALL

ONE way and another Gray's Inn has been getting a lot of Press attention lately over the completion of its brand new Tudor Hall, formally opened by the Duke of Gloucester on 5th December. With all becoming deference solicitors may feel that they too have a crumb of legitimate interest in the feast, since from their pockets, by way of the rent-roll, is drawn a large proportion of the income of the Honourable Society. They are (I think the term is) "Grayans," as it were, by extraction. I suppose one ought not really to call the Hall "brand new." After all it has been fitted (except for that new bay window on the south side) into the pre-war shell and so the proportions are the same. The hammer beam roof is in design a faithful copy of the one destroyed. The ornate pinnacled "gothick" louvre or turret, product of the 1820's, has been piously reproduced. The armorial glass was, with commendable foresight, evacuated to a place of safety in good time. With rather less foresight the great carved gallery screen was not dismantled until the eleventh hour nor actually removed until the twelfth when the Hall was actually burning. In the confusion bits of it disappeared (no one quite knows how), but there it stands again whole, and one would be hard put to it to tell the original from the replacements. All the same, commendable though the achievement is, this is not the old Hall and it is not just a matter of the new bay window and its perhaps rather commonplace (or so it seems to me) striving after a newly conceived symmetry. The old Hall was cosy and dim and intimate,

> "Compact of ancient tales and port
> And sleep and learning—of a sort."

The new one is light and bright and smart and social in, so to speak, the Heal's manner, and very nice too if that's the sort of Hall you happen to prefer. You will know what I mean if you have been listening to Belloc's "Four Men" on the radio lately or, better still, if you have read that moving outburst of the Sailor: "I will not go sleep in the inn at Bramber . . . Who knows that we shall find it the same? Who knows that the same voices would be heard in that garden or that the green paint on the tables would still be dusty and blistered and old? . . . Have you not learnt . . . how all things only exist because they change? And what purpose would it serve to shock once more the craving of the soul for certitude and for repose? With what poignant and terrible grief should we not wrestle if the contrast of that which was once the inn at Bramber should rise, a terrible ghost, and challenge that which is the inn at Bramber now! Of what it was and what it has become might there not rise a dual picture before our minds—a picture that should torture us with the doom of time?" Well, it's no use repining because a new Hall has got to be new even if it has a Tudor shape. Maybe the first step to breathing in its soul would be to hold a month of rowdy parties in it, a house warming in a very literal sense.

PLANS FOR THE SQUARES

AND what about the rest of the Inn? Well, the new Benchers' entrance next to the Hall in South Square looks a distinct improvement on what was there before. The Square, it is true, has lost a good deal of charm with the felling of the trees beside the Hall, but it wasn't really the senseless piece of vandalism it looked at first sight; they had received fatal injuries from the devouring flames. The ultimate intentions for the chambers in this Square have already been made public and this, of course, has a certain interest for tenants and potential tenants. They have perhaps a touch of the slightly over-decorated flourish of Osbert Lancaster's "Barkers' Georgian"—over-decorated, that is, in relation to the traditional simplicity of the Inn, but then everybody hasn't got the taste for simplicity. Next door in Gray's Inn Square the new buildings, it is understood, will follow the general lines of those that survive, save that (so the whisper goes) there may be three doors instead of four in the reconstructed west block, which would obviously be rather a pity aesthetically since it would tend to give the lines of windows, less broken up, a monotonously "office block" look. As lifts are part of the scheme, I suppose the idea must be to save a lift, but, after all, mightn't it be an interesting experiment to have one liftless staircase to test tenants' reactions? Or might not one door serve the ground floor only, say at No. 5, where before the war there was a very handy passage through to the gardens? This whole lift business is rather double-edged anyway, for even the people who start by saying "Oh, how lovely!" tend to change their tune to one horrified "Oh!" when they realise how much the convenience would put on to their rents. A lift must cost somewhere around a couple of thousand pounds and who pays for it but the tenants of the upper floors? A stiff rent or a stiff climb? Except for the fairly wealthy and the elderly-minded the answer (especially in these days) is by no means a foregone conclusion—and in the past the Inns have not predominantly made themselves a sanctuary for the rich—rather the opposite. On that point one recalls the characteristically emphatic paragraph in Eric Gill's autobiography, recalling those young days when he lived in Lincoln's Inn. Among the tenants, whether lawyers or architects or writers, it was generally understood that neither riches nor social advancement were the important things, and therefore, said he, they could agree about good living. As for Gray's Inn Place, the idea for that is to carry the new buildings over a round entrance archway. They are Georgian in spirit, plainly conceived, with semi-basement, ground floor and two floors above, and though they may not have the quite exceptional charm of the seventeenth century houses that were there before, they seem to promise a sufficiently satisfying appropriateness. Incidentally, the brace of stone griffins which have taken to roosting in the Inn of late, first in South Square and now by the Fulwood Place gate, are eventually to find their ultimate resting place flanking the entrance from Warwick Court.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

The "Assistant Solicitor"

Sir,—A protest should be made against the use (which appears to be growing) of the misleading description "Assistant Solicitor." There is no such professional status. A person is either a solicitor or not a solicitor. The description "Assistant Solicitor" gives the impression that the person so described has something less than full professional status; that he or she has still something to do before becoming a "full" solicitor, which, of course, is not the case. Are there assistant barristers or assistant doctors?

I hope that all solicitors who are affected will insist on being properly described as solicitors. Thus, a solicitor who is employed by a firm of solicitors is a "Solicitor with" the particular firm, not an "Assistant Solicitor with . . ." In this connection, appropriate alterations should be made in the form containing the declaration for a practising certificate. If it is necessary for The Law Society, or the publishers of the Law List, to have the information asked for in the questions appearing at the end of the form, then all reference to "Assistant Solicitor" in such questions should be omitted. Incidentally, is a solicitor under any obligation to answer these questions? If not, it might have been more courteous for the questions to be preceded by a request for the questions to be answered voluntarily.

RICHARD C. FITZGERALD.

West Norwood.

PRACTICAL CONVEYANCING—XL

Dating of Mortgages

THE opinion was recently expressed in these notes (*ante*, pp. 463, 464) that it is probably wise to date a conveyance and mortgage the same day where part of the purchase money is raised by means of a mortgage. The suggestion arose from a consideration of *Coventry Permanent Building Society* v. *Jones* [1951] 1 All E.R. 901, where the problem was whether a mortgagee could obtain an order for possession against the tenant of part of a house. The tenancy was a weekly one which an intending purchaser had agreed to grant after contract but before conveyance. Prior to completion the purchaser had no legal estate, and so his attempt to grant a weekly tenancy amounted to an estate contract which was void against his mortgagee as it was not registered. Nevertheless, the tenant argued that a legal tenancy by estoppel arose as soon as the conveyance to the purchaser was executed, and that this had priority over the mortgage. Harman, J., held, however, that conveyance and mortgage formed one transaction, and that estoppel creating a legal tenancy could not take effect prior to the mortgage. Consequently, he made an order for possession against the tenant.

In the more recent case of *Universal Permanent Building Society* v. *Cooke* [1951] 2 All E.R. 893, the facts were very similar, but the conveyance was dated 28th December, and the mortgage 29th December. It is important to note that there was no evidence before the court to show that the two documents were parts of one transaction, and so the *prima facie* rule operated that the date appearing on each deed was presumed to be the date of delivery. It followed that there was an interval between conveyance and mortgage during which a tenancy by estoppel arose which was binding on the mortgagee.

The value to a mortgagee of the right to obtain vacant possession is so great in these days that his solicitor must do everything possible to prevent any tenancy binding on him. Therefore, in the common case in which part of the purchase money is raised by mortgage, the conveyance and mortgage should be given the same date. Apparently this was done in the transaction which gave rise to the *Coventry Building Society* case. It is not correct to assume that because different dates were used in the *Universal Building Society* case the danger of a tenancy by estoppel binding on the mortgagee will always exist if the same date is not given to both documents. The judgments make it quite clear that even in such a case evidence can be given to show that in substance one transaction only was involved ; that evidence was lacking in the particular proceedings. Nevertheless, by using the same date, the mortgagee obtains the benefit of the presumption in his favour that there was no gap in time during which a tenancy by estoppel might arise against him. As a result, the decision in the *Universal Building Society* case appears to confirm the suggestion that the same date should be used.

Incidentally, one may note *Woolwich Equitable Building Society* v. *Marshall* [1951] 2 All E.R. 769, where a similar issue arose. The distinctive feature of this case was that the title to the land was registered, and so the question of registration, as an estate contract, of the agreement to create the tenancy did not arise. Danckwerts, J., held that the interest of the tenant, who had entered into possession before completion, was an overriding interest (Land Registration Act, 1925, s. 70 (1)). Consequently, it was binding on the mortgagee even though no estoppel arose. Thus, in this case, the mortgagee had no remedy against the tenant who relied on his protected tenancy. It is interesting to see how the rights of the parties may differ materially according to the chance that the title to the land was registered. Very often we assume that in the case of registered land the procedure for carrying out transactions differs from that applicable to unregistered land, but that the substantial rights of the parties are the same. However much it may be regretted, there is no doubt but that the detailed rules in the 1925 legislation may affect the rights of the parties, and so their financial positions, very seriously.

Purchase of Rent-Restricted Properties

One of the difficulties arising on the purchase of small houses for investment purposes is the ascertaining of standard rents. These should be stated in the rent books, but often they are not known to the vendor or to the tenants. A purchaser usually buys at a price which he thinks will enable him to obtain a reasonable return on his money and so the amount of the recoverable rent is most important. If, after completion, he finds that the rents disclosed to him by the vendor are in excess of the recoverable rents and the tenants obtain a reduction, he may well feel aggrieved. Nevertheless, it was decided in the recent case of *Schlisselmann* v. *Rubin* [1951] W.N. 530 ; *ante*, p. 745, that even a statement in the contract of the amount of the rents will not provide him with a remedy. It was there decided that such a statement does not imply that the rents are the lawfully recoverable rents under the Rent Restrictions Acts. The conclusion seems to be that, where, as is usual, the purchase price is fixed on the basis that the rents give a certain return on the capital provided by the purchaser, some form of guarantee might be requested that they are lawfully recoverable. It would be reasonable to give the purchaser a right of rescission before completion if inquiries show that they are not ; the purchaser would then have to make his inquiries before completion in the knowledge that he would have no remedy afterwards.

J. G. S.

THE SOCIETY OF CLERKS OF THE PEACE

The annual dinner of the Society of Clerks of the Peace of Counties and of Clerks of County Councils was held on 28th November at Claridge's Hotel. Mr. W. L. Platts (chairman of the society) presided, and among others present were: The Duke of Norfolk, the Earl of Shaftesbury, the Earl of Ancaster, the Earl of Cranbrook, Viscount Bridgeman, Lord Lloyd, Lord Porter, Lord Justice Morris, Sir George Mowbray, Sir Robert Adcock, Sir Leslie Brass, Sir Roland Burrows, General Sir Robert Haining, Sir Thomas Harrison, Sir Gilmour Jenkins, Colonel Sir Edward Le Breton, Sir Theobald Mathew, Sir John Maud, Sir Frank Newsam, Sir Cecil Oakes, Sir Robert Pattinson, Sir George Pepler, Sir Leighton Seager, Sir Reginald Sharpe, Sir Thomas Sheepshanks, Sir Herbert Shiner, Sir John Wrigley, Mr. Hubert Ashton, M.P., Mr. H. G. Thornley, Mr. H. S. Martin, and Mr. L. Edgar Stephens.

LAW SOCIETY YACHT CLUB

The Law Society Yacht Club was formed on 5th December at a meeting in The Law Society's Hall, Chancery Lane. Flag officers appointed were: Commodore, Mr. Lawrence Legg; Vice-Commodore, Mr. J. Eldon Walker; Rear-Commodore, Mr. E. G. Marshall.

At an extraordinary general meeting of the Law Sales Society, Ltd., on 30th November, special resolutions were passed providing for the voluntary winding up of the company and "That the said Liquidator be authorised and directed to pay and transfer to the Solicitors Benevolent Association the whole of the surplus assets of the Company remaining after satisfying all the liabilities of the Company and the costs of the liquidation thereof."

NOTES OF CASES

HOUSE OF LORDS

SHIPPING: COLLISION: CONCURRENT REPAIRS AND OVERHAUL

The "Carslogie"

Lord Jowitt, Lord Normand, Lord Morton of Henryton, Lord Tucker and Lord Asquith of Bishopstone
29th November, 1951

Appeal from the Court of Appeal (94 SOL. J. 594).

The plaintiffs' vessel was in 1941 damaged in a collision with the defendants' ship, for which the defendants admitted liability. The repairs rendered necessary to the plaintiffs' ship by the collision were not, however, immediately necessary. For convenience the vessel was taken to the United States for repair. That substituted voyage was a trading voyage, so that the vessel remained on hire. On the way she suffered heavy-weather damage necessitating immediate repairs. These, together with some engine maintenance repairs (not here material), took fifty-one days to execute. The collision repairs, to which ten days were attributable, were executed at the same time. The defendants objected to the registrar's including in the damages as assessed by him ten days for detention of the ship, because, they said, there had been no effective detention by their fault, the ship being in any event detained by the simultaneous repair of the heavy-weather damage. On a motion in objection to the registrar's report Willmer, J., said that the distinguishing feature of the case was the fact that the collision repairs were *not* immediately necessary. Under the terms of the seaworthiness certificate, issued after the execution of temporary repairs at Greenock, the damaged vessel was permitted to continue trading subject to the repair of the damage at owners' convenience. Every case must depend on its own particular facts; a plaintiff who sought to claim from a wrongdoer damages for the detention of his ship must prove his case to the satisfaction of the court (see *The Ikala* [1929] A.C. 196, *per* Lord Sumner, at p. 205; *The Argentino* (1888), 13 P.D. 191, *per* Bowen, L.J., at p. 201; *The York* [1929] P. 178). He saw no distinction in principle between those cases and the present case. The heavy-weather damage received by the plaintiffs' ship while crossing the Atlantic required immediate repair, and resulted in the complete immobilisation of the ship for a period exceeding the time required for the repair of the collision damage. The plaintiffs had not proved against the defendants any loss by the detention of their ship, and the objection to the registrar's report must be upheld. The plaintiffs' appeal to the Court of Appeal was allowed, and the defendants now appealed to the House of Lords. The House took time for consideration.

LORD JOWITT said that when the plaintiffs' ship sailed for New York after the temporary repairs she was seaworthy, but the heavy-weather damage rendered her unseaworthy. The latter was not in any sense the consequence of the collision and must be treated as a supervening event occurring in the course of a normal voyage. For the defendants it was contended that, as a result of the heavy-weather damage, the plaintiffs had not suffered any damage by reason of detention, since during the whole time that the collision repairs were being undertaken their ship was undergoing repairs to render her seaworthy, which repairs were necessitated by heavy weather. It was further contended that, as the heavy-weather damage was the only damage which rendered the ship unseaworthy, that must be regarded as the effective cause of the detention. It was contended for the plaintiffs that, as they were entitled to have permanent repairs effected as a consequence of the collision and had actually and properly decided to send the ship to New York to have these repairs effected, they had become "necessary," and that they were entitled to claim against the owners of the wrongdoing ship for damages due to detention. They relied on *The Haversham Grange* [1905] P. 307. It was for the plaintiff in an action for damages to prove his case to the satisfaction of the court. He had to show affirmatively that damages under any particular head had resulted from the defendant's wrongful act. This principle applied also to maritime collisions. In such cases the plaintiffs were only entitled to recover damages by way of demurrage in respect of such money as the court was reasonably satisfied was lost (see *The Marpessa* [1907] A.C. 241). The same principle had been laid down in the United States (see *The Conqueror* (1896), 166 U.S. 110, at p. 125). If a collision took place which would have occasioned a time in dock for repairs and the ship was lost before those repairs could be effected, any claim for loss of time which would have been occupied in such repairs must fail. In *The York* [1929] P. 178, at p. 185, other illustrations were put showing circumstances which might make it impossible to substantiate a claim for damages for loss of profitable time. A ship might be detained by ice so that she could not possibly trade at all, or, possibly, by an embargo. Damages were payable for the detention of a ship, since she was a profit-earning machine, and in such a case it was essential to answer the question: Assuming that she was detained, and assuming that she was detained by the wrongful act of the defendant, did the plaintiff sustain damage as a result of that detention? In the present case, if there had been no collision the ship would have been detained for thirty days for repairs to the heavy-weather damage. Her owners did not sustain any damage in the nature of demurrage by reason of the fact that for ten days out of the thirty she was also undergoing repairs in respect of the collision. In *The Haversham Grange, supra*, it was clear that damages had resulted from the detention. In the present case the damage brought about by the collision did not, in the events which happened, cause any loss of profitable time to the plaintiffs because when their vessel entered dry-dock she was not a profit-earning machine. The appeal should be allowed.

The other noble and learned lords delivered concurring opinions. Appeal allowed.

APPEARANCES: *D. A. Scott Cairns*, K.C., and *M. Rena* (*Clyde and Co.*); *Kenneth Carpmael*, K.C., and *Vere Hunt* (*Bentleys, Stokes & Lowless*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: ACTOR'S CONTRACTS

Gospel *v.* Purchase

Lord Simonds, Lord Normand, Lord Morton of Henryton, Lord Tucker and Lord Asquith of Bishopstone
29th November, 1951

Appeal from the Court of Appeal (*sub nom. Purchase* v. *Stainer's Executors*, 94 SOL. J. 337).

Payments were made to the executors of Leslie Howard (Stainer), the film actor, director and producer, which accrued due under film contracts made by the actor before his death from enemy action in 1943. The payments in question were in respect of shares of receipts or profits which could not be ascertained until some time after the work under the contracts had been completed. His executors objected to being assessed to income tax under Sched. D to the Income Tax Act, 1918, for the years 1944–45, 1945–46 and 1946–47 in respect of those payments. The Crown contended that the amounts so received were "annual payments" assessable under Case III of Sched. D, or, alternatively, that they came under Case VI of the Schedule as being "annual profits or gains not falling under any of the foregoing cases and not charged by virtue of any other schedule." The commissioners held that the share of profits or receipts could not be taxed as annual payments under Case III, but remained the emoluments of a profession taxable under Case II.; but that, as the actor had died in 1943, assessments under that case were not competent for the years 1945–47, as in fact the Crown admitted; and that, as all the emoluments fell under Case II, they could not be charged under either Case III or Case VI. The commissioners accordingly discharged the assessments, and Croom-Johnson, J. (94 SOL. J. 49), affirmed their decision. The Court of Appeal (Evershed, M.R., and Somervell, L.J.; Jenkins, L.J., dissenting) held that, whereas the payments in question could not, since the actor had, through his death, ceased to carry on his profession, be assessed under Case II, which covered such payments made to him during his life, the nature of the payments under the contracts might be changed by reason of the taxpayer's death and so be assessable under Case III. They therefore reversed Croom-Johnson, J. The executors now appealed. The House took time for consideration.

LORD SIMONDS said that, had the contention of the Crown not found favour with the majority of the Court of Appeal, he would have thought it unarguable. Rowlatt, J., had said in *Bennett* v. *Ogston* (1930), 15 Tax Cas. 374, that, where a trader or professional man died or went out of business and there remained sums for goods formerly supplied or professional services owing to him, there was no question of assessing those receipts to income tax. They were taken to be covered by the assessment made during the life of the business. He (his lordship) was satisfied that that

was a correct statement of the relevant principle of income tax law. That being so, there was an end of the case. It was wholly irrelevant that the sums were not payable until after the actor's death, and equally so that they were not and could not be quantified until after that event. They retained the essential quality of being the fruit of his professional activity. If in all the circumstances it was not possible to bring the sums into account in the years when they were earned, the result was not to change the character of the payments but to exhibit that some professional earnings might escape the income tax net. The appeal should be allowed.

The other noble and learned lords concurred. Appeal allowed.

APPEARANCES: *L. C. Graham-Dixon*, K.C., and *Geoffrey Tribe* (*Walter, Burgis & Co.*); *F. Grant*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

IMPERFECT GIFT: SUBSEQUENT APPOINTMENT OF DONEE AS EXECUTRIX: INTENTION OF GIVING DISTINGUISHED FROM INTENTION TO GIVE

***In re* Freeland; Jackson *v.* Rodgers**

Evershed, M.R., Jenkins and Morris, L.JJ.
7th November, 1951

Appeal from Danckwerts, J.

The plaintiff alleged that the testatrix in March, 1949, gave her a motor car, but as it was not in a roadworthy condition it remained in the garage of the testatrix; the plaintiff further alleged that in May, 1949, the testatrix agreed to lend the car to the defendant, who took possession of it, had it repaired and used it. By her will, dated 30th June, 1949, the testatrix, who died on 8th April, 1950, appointed the plaintiff and defendant to be her executrices. The plaintiff claimed that she was the owner of the car, but the defendant contended that the testatrix had made a gift of it to her. Danckwerts, J., decided in favour of the plaintiff on the ground that the imperfect gift in her favour in March, 1949, was perfected by her appointment as executrix. The defendant appealed.

EVERSHED, M.R., said that the proposition associated with *Strong* v. *Bird* (1874), L.R. 18 Eq. 315, that an imperfect gift might be perfected by the subsequent appointment of the donee as personal representative, disguised an important distinction. There might be an intention of giving, that is to say, an intention to do that which, at the time of doing it, was meant to be a gift out and out, or there might be an intention to make a gift in the future, which was in effect a promise, not, of course, enforceable in the eyes of the law, but a promise to make a gift thereafter. The doctrine in *Strong* v. *Bird* did not apply to the latter of the two types of case. The question was whether the testatrix at the relevant date had intended to make an absolute gift of this motor car to the plaintiff. A claimant in such a situation had a heavy onus to discharge; he (the learned Master of the Rolls) thought, after considering the evidence, that the plaintiff had not made out her case and that the appeal should be allowed.

JENKINS, L.J., and MORRIS, L.J., agreed. Appeal allowed.

APPEARANCES: *John Bowyer* (*Beaumont, Son & Rigden*); *Nigel S. Warren* (*Gordon, Gardiner, Carpenter & Co.*, for *F. H. Carpenter and Oldham*, Brighton).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

NEGLIGENCE: SHOOTING ON PRIVATE LAND

Chettle and Another *v.* Denton

Somervell, Jenkins and Hodson, L.JJ. 23rd November, 1951

Appeal from Parker, J.

The first plaintiff was walking on land known as Round Hill, near Folkestone, when she was seriously injured by pellets discharged from a gun fired by the defendant. Parker, J., found as a fact that the land was private property, but that for a long period the public had been accustomed to walk over it without interference, and that at the material time the plaintiffs were on the land as licensees and not as trespassers. That being so, the judge held, the defendant owed a duty to them if he knew, or ought to have known, of their presence. When firing the gun he was aiming at a pigeon, and was unaware of the presence of the plaintiffs. Nevertheless, he was negligent in not seeing them, and was liable in law for the injury caused. He awarded £5 special damages to the husband plaintiff, and £1,400 damages to his wife. The defendant appealed.

SOMERVELL, L.J., said that it was contended that the defendant had no reason to anticipate that persons would be anywhere near him. But in fact the plaintiffs were visible when the shot was fired. The defendant's sight was concentrated on the bird and he did not look to see if there was anyone in the line of fire. When the trigger was pulled the plaintiffs were plainly visible; and the defendant had failed to exercise that care which he owed to persons who were lawfully there. The appeal therefore failed.

JENKINS and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *F. W. Beney*, K.C., and *Malcolm Morr* (*Arthur E. & C. Burton*, for *Worthington-Edridge & Ennio* Folkestone); *Robert Fortune* (*F. W. Perkins & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WINDOW CLEANER'S FALL: LIABILITY

Christmas *v.* General Cleaning Contractors, Ltd.

Denning and Hodson, L.JJ., Lloyd-Jacob, J.
29th November, 1951

Appeal from Jones, J. (*ante*, p. 452).

The plaintiff, a window cleaner employed by the first defendants, was cleaning an upper-floor window belonging to the second defendants, a limited company, when, owing to a defective sash, he fell twenty-nine feet to the ground and was injured. In this action he alleged that his injuries were caused by the negligence of his employers in failing to provide him with proper equipment or a safe system of work; and by the negligence of the company in allowing the window to be defective. Each of the defendants denied negligence and alleged it on the part of the other and of the plaintiff. Jones, J., gave judgment for the plaintiff against both for £3,500, and both now appealed. (*Cur. adv. vult.*)

DENNING, L.J., reading his judgment, said that while the plaintiff was standing on the window sill in question cleaning the top part of the upper sash of one of its window panes the lower sash came down by itself and knocked from its position the hand by which he was supporting himself by holding the upper sash. The result was that he fell to the ground. There had been no previous trouble with that window though other windows in the building had been found troublesome and defective. Subsequent examination revealed that the only defect in the lower sash was that the balance weights were rather too light so that it ran downwards too easily. It did not follow that the company were guilty of negligence. The first question to consider was whether they were in breach of the duty of care which they owed to their servants and others. He (his lordship) thought not for the simple reason that, in spite of the defect, the window was safe enough for all ordinary purposes. The next question was whether the company were in breach of their duty to the window cleaner. The defect rendered the sash a danger to him, but the liability of the company depended on whether that was an unusual danger. He did not agree with Jones, J., that it was. The evidence showed quite clearly that windows which were safe enough for ordinary purposes might yet have a defect rendering them a danger to window cleaners. What, then, was the law on the matter? Was a householder responsible for seeing that windows were safe for window cleaners to hold on to? He thought not, though the householder was concerned to see that his windows were safe for his servants to open and close and, indeed, clean. The duty which a householder owed to his servants was much higher than that which he owed to a window cleaner, who was only an invitee. A householder employed a window cleaner as an independent contractor and left it to him to decide how he should do the work and what safeguards he should take—whether he should use ladders or cradles or simply stand on the sill. The householder did not know what strains or stresses the window cleaner was going to put on the window. If the cleaner chose to rely on the window for his safety, then it was for him and not for the householder to take steps to see that it was safe for his special purposes. Jones, J., was accordingly wrong in holding the company liable, and their appeal succeeded. The next question was whether the contractors were liable to the plaintiff as their employee. It was argued for them that employers who sent their servants out to work on the premises of other people had no responsibility for the safety of those premises. *Taylor* v. *Sims* (1942), 58 T.L.R. 339, was cited in support of that proposition. It was contended that it was for the occupier to see that the premises were safe for the workmen and not for

the employer to do so. He (his lordship) did not agree with that proposition and referred to *London Graving Dock Co.* v. *Horton* [1951] A.C. 737, *ante*, p. 465. It must follow that it was for the employer, who sent his men to the premises, to take reasonable care to see that the premises were safe for the men, or else take proper steps to protect the men from the dangers to which he sent them. There was a difference between a master man and a journeyman; the master man, working on his own account, who knew of the dangers, had a choice before him; he need not do the work if he did not wish to run the risk. But a journeyman, working for another, had no such easy choice. He had been sent to do the work, and he might well feel that do it he must even though he knew it involved some risk. If such a man had no remedy against the occupier—and *Horton's* case, *supra*, showed that he had none—then it must be the duty of his employer to take reasonable care to protect him. The question, then, was whether the defendant contractors had taken reasonable care to protect the plaintiff. Jones, J., found that they had not, and he, Denning, L.J., fully agreed. Window-cleaning was a dangerous occupation, and the plaintiff fell because of one of the dangers usual to it. The contractors should have taken steps to protect him from the dangers; they should have laid out the work more carefully. One way would have been to have the cleaning done from a ladder instead of a sill. Another would be to ask the householder to allow the contractors to insert hooks in the brickwork to which a safety belt could be attached. The contractors said that those suggestions were not practicable, and that it was the usual thing for men to clean windows by standing on a sill. That answer did not satisfy him (his lordship). Accordingly the appeal of the contractors failed.

HODSON, L.J., and LLOYD-JACOB, J., read assenting judgments. Orders accordingly.

APPEARANCES: *H. I. Nelson*, K.C., and *Stephen Chapman* (*L. Bingham & Co.*); *M. Berryman*, K.C., and *N. Richards* (*Berrymans*); *Robert Fortune* (*Wedlake, Letts & Birds*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

CHARITABLE PURPOSES: EDUCATIONAL TRUST: PROMOTION OF ARTS OF SOCIAL INTERCOURSE AND KNOWLEDGE OF MASTERPIECES OF FINE ART

***In re* Shaw's Will Trusts; National Provincial Bank, Ltd. *v.* National City Bank, Ltd.**

Vaisey, J. 3rd December, 1951

Adjourned summons.

By her will, made in 1940, the testatrix (the wife of George Bernard Shaw) gave the residue of her estate to the defendants, an Irish bank. After declaring that she was desirous of promoting and encouraging in Ireland the bringing of the masterpieces of fine art within the reach of the Irish people of all classes, and further declaring that the efficiency of highly instructed and capable persons was often defeated for want of organised training for personal contacts and their authority made derisive by awkward manners, and their proper employment made socially impossible by vulgarities of speech and other defects, she directed the constitution of a fund and the use of its net income for the following purposes: (1) the making of grants to institutions having for their objects the bringing of the masterpieces of fine art within the reach of the people of Ireland of all classes; (2) the teaching, promotion, and encouragement in Ireland of self-control, elocution, oratory, deportment, and the arts of social intercourse, and of public, private, professional and business life; (3) the endowment of chairs and readerships for promoting the study of the said objects.

VAISEY, J., said that the problem was whether the court could extract from the welter of words in the will the intention to promote the education of the Irish to be better citizens, or whether the testatrix had defeated her object by verbosity which was too vague or which provided for objects which were too fanciful. It had been argued that the testatrix had intended to promote a sort of finishing school, and, on the whole, that seemed to be the right view to take. The purposes indicated did not seem to be outside those of a somewhat pedantic educational establishment. The trusts set out in the will were educational, and were for purposes which benefited the public. They contained no such fanciful or extraneous non-educational purposes as could render them void. There would accordingly be a declaration that there was a valid charitable gift.

APPEARANCES: *K. J. T. Elphinstone*; *Charles Russell*, K.C., and *Michael Browne* (*Lawrence, Graham & Co.*); *Wilfrid Hunt* (*Young, Jackson, Beard & King*); *S. Pascoe Hayward*, K.C., and *John Monckton* (*J. N. Mason & Co.*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

COMPANIES: "VACANCY" LEFT BY DIRECTOR

Zimmers, Ltd. *v.* Zimmer

Parker, J. 8th November, 1951

Action.

By art. 13 of the articles of association of the plaintiff private company the number of directors was to be not less than one or more than five, but the company in general meeting had the power to reduce or increase those limits. By art. 78, any casual vacancy occurring in the board of directors might be filled up by the directors, but the person so chosen was subject to retirement "at the same time as if he had become a director on the day on which the director in whose place he was appointed was last elected a director." By art. 79 the directors had power to appoint a person as an additional director who should retire from office at the next following ordinary general meeting, but should be eligible for election by the company at that meeting as an additional director. The defendant's wife was appointed the first director, and on 29th June, 1948, it was resolved in annual general meeting that his brother should also be a director. On 25th May, 1949, the defendant's wife resigned her directorship and a vacancy thus occurred. The brother continued as sole director until 3rd January, 1951, when his wife was specifically appointed an additional director. On 4th April, 1951, it was resolved at a meeting of directors that the defendant should be "appointed a director of the company," it not being stated whether he was to be an additional director or to fill a casual vacancy. At the annual general meeting on 21st May, 1951, a resolution was proposed that the defendant and his wife, "additional directors appointed by the directors, who retire from office under the provisions of article 79 of Table A, be appointed additional directors"; but neither was in fact elected. The defendant contended that he had been appointed a director on 4th April, 1951, and still remained a director. The plaintiff company contended that the defendant had been appointed an additional director, who had not been re-elected, and they now sought an injunction to restrain the defendant from entering their offices or in any way interfering with their business.

PARKER, J., said that although, as Fry, J., said in *Munster* v. *Cammell Co.* (1882), 21 Ch. D. 183, the power to fill up a casual vacancy could be exercised at any time, it must, of course, be a condition that the casual vacancy still subsisted. By 4th April, 1951, the vacancy created by the resignation of the defendant's wife no longer existed; for, when the maximum number of possible directors was five, and a company started with one director and later had five, and then decreased that number to one again, it did not seem right to say that for any time in the future there were four casual vacancies. That seemed to him to be the fallacy in the argument for the defendant. If on 3rd January, 1951, the company was really treating the vacancy as still subsisting, it would undoubtedly have appointed the brother's wife to fill that vacancy, instead of making her an additional director. It followed, in his view, that the defendant ceased to be a director on 21st May, 1951, when at the annual general meeting he was not re-elected, and the plaintiff company were *prima facie* entitled to an injunction as claimed.

APPEARANCES: *J. G. Strangman*, K.C., and *M. Littman* (*Hardman, Phillips & Mann*); *Claude Duveen* (*P. Cromwell*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: TECHNICAL DEFECT IN CLAIM FOR COMPENSATION

British & Colonial Furniture Co., Ltd. *v.* William McIlroy, Ltd.

Donovan, J. 21st November, 1951

Preliminary point of law.

Tenants who had received notice to quit the premises where they were carrying on business served a notice on the landlord under s. 4 of the Landlord and Tenant Act, 1927, claiming compensation for loss of goodwill, and a second notice claiming in the alternative a new lease. In the former notice the tenants failed to specify the amount claimed as compensation. The

landlords contended that that omission, which was contrary to R.S.C., Ord. 53D, r. 1, invalidated the notice and so disentitled the tenants to compensation or a new lease, because the tenants' claim had not been made "in the prescribed manner" under s. 4 (1) of the Act. The tenants contended that, as the originating summons taken out for the settlement of matters at issue between the landlords and the tenants specified the amount claimed, it could be read with the notice under s. 4 and so validate it.

DONOVAN, J., said that, in view of the omission, the notice under s. 4 did not substantially comply with Ord. 53D, r. 1 (1) (*d*), for it was material for the landlords to know the actual amount claimed. It was not a question of pure technicality. He was not saying that the amount might not be indicated otherwise than by an actual figure. Next, it was impossible for the originating summons to be read with the notice under s. 4 as the tenants desired, for the summons was taken out after expiry of the month from the date of the notice to quit within which the claim under s. 4 had to be notified. The tenants were accordingly debarred from making a claim for compensation.

The point then remained that s. 5 (3) (*a*) provided that "unless the tenant proves that . . . he would be entitled to compensation" under s. 4 a grant of a new lease should not be deemed reasonable. The landlords relied on that provision as debarring these tenants from claiming a new lease. He could not accept that construction of s. 5 (3) (*a*): it did not mean that a tenant could not have either compensation or a new lease unless he effectively claimed both. "Would be entitled to compensation" meant entitled to compensation if claimed in the prescribed manner, on which hypothesis, as was not denied, the tenants would be entitled to compensation. The failure to claim compensation in due form was irrelevant to the claim for a new lease. It was the tenants' right to compensation duly claimed which s. 5 (3) (*a*) prescribed as the condition precedent to the right to a new lease. The claim for a new lease might accordingly proceed. Order accordingly.

APPEARANCES: *D. Weitzmann*, K.C., and *Miss Faith Hopkins* (*Paisner & Co.*); *Rodger Winn* (*Hale, Ringrose & Morrow*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PROBATE: MUTILATED WILL

Wass and Others *v.* Treasury Solicitor

In the Estate of Bromham, deceased

Lord Merriman, P. 20th November, 1951

Probate action.

At or about the end of 1948, while in hospital, the deceased asked one of the plaintiffs to tell his solicitor that he wished to make a fresh will and said that he was going to destroy his old will made in 1945. The solicitor, however, was ill, and died shortly afterwards. The deceased was distressed to learn of the solicitor's death, and said that he would defer making the new will. His condition deteriorated, and no further will was executed. On his death the will of 1945 was found in a mutilated condition among his personal possessions at his bedside. There was no evidence of the date when it had been mutilated. It was contended on behalf of the Crown that the court should presume the will to have been destroyed *animo revocandi*, and that, since the deceased left no next of kin, the estate belonged to the Crown as *bona vacantia*.

LORD MERRIMAN, P., said that, although there had undoubtedly been a very considerable lapse of time between the date when the deceased had last discussed his testamentary intentions and his death, and although, as had been urged on behalf of the Crown, he might very well during that period have changed his mind, in his (his lordship's) opinion, the lapse of time alone did not matter. What was important was the intention of the deceased when he mutilated the will. If he had mutilated that document because he firmly intended at that time to make a new will, it did not matter how long a time elapsed before his death. On the evidence before the court the proper inference to draw was that the will of 1945 had been destroyed when the deceased intended to make a new will, although there was no evidence of the date when the will had been mutilated. In fact he never did make a new will. Therefore, as the act of revocation had been conditional upon the execution of a new will, which event had not taken place, the mutilated will must be held not to have been revoked. Judgment for the plaintiffs.

APPEARANCES: *William Latey*, K.C. (*Gibson & Weldon*, for *Marchant & Co.*, Mansfield); *Victor Russell* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE: BELGIAN WILL DISPOSING OF NO PROPERTY WITHIN JURISDICTION

***In re* Wayland, deceased**

Pearce, J. 21st November, 1951

Application for a grant of probate.

The deceased made a will in Brussels on 6th April, 1947, which was validly executed in accordance with Belgian law, and expressly disposed only of the deceased's estate in Belgium. As it was made by a British subject in Belgium and was valid according to the law of Belgium, it was also valid according to English law by virtue of the Wills Act, 1861. On 26th July, 1949, the deceased duly executed in England a will which disposed only of estate in England. This will contained a clause revoking "all former wills and testamentary dispositions made by me," but went on: "I declare that my domicile is England and that this will is intended to deal only with my estate in England." On 26th November, 1949, the deceased duly executed a codicil to his English will. The questions for decision were (*a*) whether the revocation clause contained in the English will operated to revoke the Belgian will; and (*b*) whether, if the Belgian will was not revoked, probate could be obtained in England notwithstanding that it did not dispose of any estate in England.

PEARCE, J., said that it appeared that both before and after the execution of the English will the deceased wrote to his attorney in Brussels to ensure that the Belgian will was in safe custody, and also that, when giving instructions for the English will, the deceased had stated to his solicitor, in reply to a question concerning the disposition of his estate in Belgium: "Don't worry about that; my Belgian lawyer will take care of it, as I have made a will in Belgium." It appeared from *Gladstone* v. *Tempest* (1840), 2 Curt. 650; *Dempsey* v. *Lawson* (1877), 2 P.D. 98; *Collins* v. *Elstone* [1893] P. 1; and *Lowthorpe-Lutwidge* v. *Lowthorpe-Lutwidge* [1935] P. 151, that the inclusion in a will of a revocation clause was not necessarily conclusive evidence of the testator's intention to revoke all previous wills. Counsel had submitted that, however heavy the burden of proof which lay on the executors to show that the deceased did not intend to revoke his Belgian will, they had discharged that burden since the known facts pointed so strongly to the deceased having no such intention. There was the further consideration that the English will was expressed to cover only estate in England, whereas, if the English will revoked the Belgian will, it would thereby affect the Belgian estate. In his opinion, on the facts, the Belgian will was not revoked. There remained the question whether the English court could admit the Belgian will to probate when that will did not dispose of any estate in England. There was no doubt that before 1932 the court could not have done so (see *In re Tucker* (1864), 3 Sw. & Tr. 585; and *In re Coode* (1867), L.R. 1 P. & D. 449). But by s. 2 (1) of the Administration of Justice Act, 1932: ". . . the High Court shall have jurisdiction to make a grant of probate or administration in respect of a deceased person notwithstanding that the deceased person left no estate." That enactment had, in his opinion, destroyed the reasoning which led to the earlier decisions. He would therefore admit the Belgian will to probate with the English will and its codicil.

APPEARANCES: *J. E. S. Simon*, K.C. (*Field, Roscoe & Co.*, for *Hallett & Co.*, Ashford, Kent).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ARREARS OF MAINTENANCE PAYABLE TO CHILDREN: PROCEDURE

Shelley *v.* Shelley

Pearce, J. 23rd November, 1951

Application for leave to issue a judgment summons.

A husband was in arrear with maintenance payable to the children of his marriage of whom his wife had been granted custody on the dissolution of the marriage. The wife now sought to recover the arrears. (*Cur. adv. vult.*)

PEARCE, J., said that where, as in this case, and as was frequently done in order to achieve a saving in tax, an order for the payment of maintenance in respect of children was made in a form directing payment to the children themselves, it was not open to the guardian or custodian of the children, who in practice administered the money for their benefit, to issue a judgment summons in respect of arrears under the order. Although it would be preferable on technical and social grounds if the judgment summons could be issued by the person having the custody of the children, he (his lordship) felt bound, on the authorities,

regretfully to hold that it could not. There was the possibility that the question whether the children by their next friend could issue a judgment summons in such a case might come before the court in the near future.*

APPEARANCES: *L. F. Sturge* (*May, May & Deacon*).

* Reporter's note. Lord Merriman, P., has since given leave to the mother to issue a summons as the children's next friend.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 7th December:—

Border Rivers (Prevention of Pollution)
Consolidated Fund (No. 3)
Expiring Laws Continuance
Home Guard
Japanese Treaty of Peace
Ministers of the Crown (Parliamentary Under-Secretaries)
Mr. Speaker Clifton Brown's Retirement
Pneumoconiosis and Byssinosis Benefit
Public Works Loans

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Northern Ireland (Foyle Fisheries) Bill [H.C.] [6th December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Affiliation Orders Bill [H.C.] [5th December.

To amend the Bastardy Laws Amendment Act, 1872, by increasing to thirty shillings the maximum weekly payment in respect of a child under an affiliation order, and, in the case of a child engaged in a course of education or training, to extend until the child reaches the age of twenty-one the period for which under that Act payments may be continued under an affiliation order or for which under the Illegitimate Children (Scotland) Act, 1930, the parents are under obligation to provide aliment; and for purposes connected therewith.

Bank Holidays (Amendment) Bill [H.C.] [5th December.

To change the date of the Bank Holiday now fixed for the first Monday in August.

Children and Young Persons (Amendment) Bill [H.C.] [5th December.

To amend the Children and Young Persons Act, 1933; and for purposes connected therewith.

Cockfighting Bill [H.C.] [5th December.

To make it unlawful to have possession of any domestic fowl prepared for use in fighting or of any instrument or appliance designed or adapted for use in connection with the fighting of a domestic fowl.

Companies Bill [H.C.] [5th December.

To amend the Companies Act, 1948, so as to permit the issue of stock and shares of no par value and to permit the conversion of authorised stock and shares into shares of no par value.

Crown Leases (Protection of Sub-Tenants) Bill [H.C.] [5th December.

To abolish the exemption of a landlord from certain enactments which arises by reason of the subsistence in his land of a superior interest belonging to the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

Declaration of Human Rights Bill [H.C.] [5th December.

To establish throughout the United Kingdom and the non-self-governing Colonies and Protectorates a standard of Human Rights and Freedoms applicable to all His Majesty's subjects without distinction of race, colour, sex, language, religion, birth or other status.

Defamation (Amendment) Bill [H.C.] [5th December.

To amend the law relating to libel and slander.

Directors, &c., Burden of Proof Bill [H.C.] [5th December.

To modify certain enactments relating to the burden of proof in criminal proceedings against directors and certain officers of bodies corporate.

Heating Appliances (Fireguards) Bill [H.C.] [5th December.

To prohibit the sale of certain heating appliances without an effective fireguard; and for purposes connected therewith.

Housing (Temporary Prohibition of Sale of Small Houses) (Scotland) Bill [H.C.] [5th December.

To prohibit the sale of certain small houses in Scotland, to authorise the compulsory taking on lease by local authorities of such houses, and to make provision for matters connected with the purposes aforesaid.

Hypnotism Bill [H.C.] [5th December.

To make illegal the demonstration of hypnotic phenomena for purposes of public entertainment.

Industrial and Provident Societies (No. 1) Bill [H.C.] [5th December.

To raise the limit on the interest in the shares of a society registered under the Industrial and Provident Societies Act, 1893, which any one member may hold and to alter the conditions subject to which such a society may accept deposits without being treated as carrying on the business of banking.

Industrial and Provident Societies (No. 2) Bill [H.C.] [5th December.

To increase the maximum amounts prescribed by the Industrial and Provident Societies Acts, 1893 to 1913, for the share holding of a member of a registered society and for deposit facilities.

Intestates' Estates Bill [H.C.] [5th December.

To amend the law of England and Wales about the property of persons dying intestate; to amend the Inheritance (Family Provision) Act, 1938; and for purposes connected therewith.

Lancaster Palatine Court Bill [H.C.] [5th December.

To extend to the Court of Chancery of the County Palatine of Lancaster certain of the provisions of the Administration of Justice Act, 1925.

Licensing (Amendment) (Tied Houses) Bill [H.C.] [5th December.

To amend the law relating to licensed premises; to abolish the tied house; to protect licensees against covenants restricting their rights to buy intoxicating liquor, food and commodities of their trade from brewers, distillers and merchants of their own choice; to prevent monopoly and restrictive practices in the liquor trade and in the trades ancillary thereto; to enable persons to purchase and consume in any licensed premises beverages and other refreshment of their own choice; to amend the Rent Restrictions Acts in so far as they apply to licensed premises; to provide security of tenure for licensees; and for other purposes connected therewith.

Loss of Employment (Compensation) Bill [H.C.] [5th December.

To provide for the payment of compensation for loss of employment after long service.

Miners' Welfare Bill [H.C.] [6th December.

To discontinue the royalties welfare levy, dissolve the Miners' Welfare Commission and wind up the miners' welfare fund; to provide for the determination of certain trusts and agreements relating to property derived from the said fund, for the transfer to the National Coal Board or the Coal Industry Social Welfare Organisation of certain property, rights, liabilities, obligations and functions, and for requiring the said Board to make certain payments to the said organisation; to amend section forty-one of the Coal Industry Nationalisation Act, 1946; and for purposes connected with the matters aforesaid.

Representation of the People (Amendment) Bill [H.C.] [5th December.

To amend section eighty-eight of the Representation of the People Act, 1949, with regard to the use of motor vehicles for conveying electors to the poll.

Riding Establishments (Amendment) Bill [H.C.] [5th December.

To amend the Riding Establishments Act, 1939; and for purposes connected therewith.

Women's Disabilities Bill [H.C.] [5th December.

To remove certain legal disabilities of women.

Read Second Time :—

Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Bill [H.C.] [5th December.
Judicial Offices (Salaries, &c.) Bill [H.C.] [3rd December.
Merchant Shipping Bill [H.C.] [5th December.

B. Questions

Shop and Business Tenancies (Rentals)

Mr. Janner asked whether legislation would be introduced to prevent excessive rentals being charged for the continuation or renewal of shop and other business tenancies in view of the hardship involved to tenants in obtaining other accommodation and losing the goodwill of their businesses.

The Solicitor-General said that under Pt. II of the Leasehold Property (Temporary Provisions) Act, 1951, shop tenants could, during the period ending 21st June, 1953, apply to the county court for a renewal of their tenancies on terms to be fixed by the court. Consequently, if demands were made on them for excessive rentals, their appropriate course would be to avail themselves of the provisions of this Act. The whole matter was at present under review, but he was not yet in a position to make a statement about further legislation on the subject. [3rd December.

Legal Aid Scheme (Certificates)

The Solicitor-General stated that by the end of the first year of the Legal Aid Scheme, 35,820 civil aid certificates had been issued. Five hundred and thirty-seven were awaiting issue to applicants who had accepted the terms offered to them. Of the 36,357 certificates issued and awaiting issue, 29,365 were in respect of matrimonial proceedings in the Probate, Divorce and Admiralty Division of the High Court. He would be glad to examine any information put before him which showed that applicants under the Scheme were in some cases paying for undefended cases more than they would have had to pay if they had employed a private solicitor. [3rd December.

Justices of the Peace (Removal)

The Attorney-General declined to introduce legislation to provide that before the Lord Chancellor removed a justice of the peace from the Commission he should hold a judicial inquiry. [3rd December.

British Nationality Act, 1948

Asked whether he would introduce legislation to rectify the anomalies of, and the injustices caused by, the present nationality laws, Sir David Maxwell Fyfe said that under the British Nationality Act, 1948, a person who was a citizen of an independent Commonwealth country was not normally also a citizen of the United Kingdom and Colonies. All such persons were, however, British subjects under the Act and he was not aware of any injustices or of anomalies which would warrant a departure from the principle on which the Act was based. [3rd December.

Maintenance Orders (Reciprocal Enforcement)

Mr. Stuart said that while the matter was being kept under review the practical difficulties had not yet been overcome which lay in the way of the application to Scotland of the Maintenance Orders (Facilities for Enforcement) Act, 1920, so as to provide for the reciprocal enforcement of orders for aliment between Scotland and those Dominions, Colonies and Protectorates to which the Act had been extended by Order in Council. [4th December.

Town and Country Planning Act, 1947 (Amendment)

Mr. R. A. Butler said he was not yet in a position to make any statement about the possibility of amending Pt. V of the Town and Country Planning Act, 1947, relating to compensation for dispossessed owners in the new town areas. [4th December.

Hire Purchase Act, 1938

Mr. H. Strauss said it was not intended in the present session to introduce legislation to increase the sum of £100 mentioned in s. 1 (c) of the Hire Purchase Act, 1938, to correspond with the present value of money. [4th December.

Obscene Publications (Prosecutions)

Sir David Maxwell Fyfe said that nineteen successful prosecutions had been instituted against publishers of obscene publications during the past twelve months. Asked whether the retailers were being treated fairly and the publishers not being let off too lightly, inasmuch as the latter presumably read all that they published, whereas the former, who were being prosecuted almost weekly, could not possibly read all the material which they sold, the Home Secretary said the question of prosecution was one for the police, who took proceedings in the cases which they thought right, but he would make inquiries in the matter. [6th December.

Bastardy Orders (Payments)

Asked by Mr. Janner whether he would introduce legislation to bring bastardy orders into line with married women's maintenance orders and guardianship orders in respect of the maximum payable for a child and continued payments beyond the age of sixteen years, the Home Secretary said a Private Member's Bill had been introduced on this topic, and the Government would give its help to see that this matter was put right. [6th December.

Juvenile Courts (Magistrates)

Sir David Maxwell Fyfe said that justices who had attained the age of sixty-five years could not in general adjudicate in juvenile courts, but were eligible, up to the age of seventy-five, for appointment to the appeal committee, which in a county heard appeals from juvenile courts as well as appeals in ordinary cases. Except in London, where there was special provision, the appeal committee was appointed by quarter sessions from among justices on the active list and quarter sessions were required to select, so far as practicable, justices having special qualifications for the hearing of appeals, including justices specially qualified for dealing with juvenile cases. It would not be practicable to have one age limit for justices hearing appeals in juvenile cases and another age limit in other cases. The average age of lay justices on the appeal panel in London was sixty-four ; the figure for the country as a whole was not available. [6th December.

Juvenile Courts

Lieut.-Col. Lipton asked the Home Secretary whether, since many juvenile courts, in dealing with children aged eight to fourteen years did not require proof that the accused child knew that his alleged offence was wrong, he would, by circular, remind juvenile court magistrates of this provision of the law.

The Home Secretary said he was not aware that juvenile courts failed to satisfy themselves on this point or that their practice had been criticised by the higher courts. [6th December.

Whist Drives and Bridge Clubs

The Home Secretary stated that advice to the police on the subject of the prosecution of promoters of whist drives and bridge clubs had been given by the then Home Secretary on 20th July, 1937, in the following terms : "There have been a number of judicial decisions to the effect that whist drives held under certain conditions are unlawful. It has, however, always been recognised that, as ordinarily conducted, whist drives are an innocent form of amusement and free from the element of mischief which accompanies gambling. Accordingly, while the Home Secretary has no authority to give instructions to the police on a matter relating to the enforcement of the law, chief constables have been advised by the Home Office to the effect that, in the view of the Secretary of State, the police should not institute proceedings except where there is reason to believe that a whist drive is a cloak for gambling or for profit-making out of gambling, that the police should limit their interference to cases where they have reason to think that actual harm is being done, and that whist drives held as a purely incidental part of their various social activities by members of *bona fide* clubs or institutions would not usually come within the mischiefs aimed at by the law. I have no doubt that the police generally are guided by this advice." [6th December.

STATUTORY INSTRUMENTS

Aberdeen-Huntly-Fochabers Trunk Road (Cairnie Diversion) Order, 1951. (S.I. 1951 No. 2089.)
Bakehouses (Sunday before Christmas) Order, 1951. (S.I. 1951 No. 2062.)
Birmingham Water Order, 1951. (S.I. 1951 No. 2072.)
Chocolate, Sugar Confectionery and Cocoa Products (Amendment No. 2) Order, 1951. (S.I. 1951 No. 2067.)
Dried Fruits (General Licence) (Revocation) Order, 1951. (S.I. 1951 No. 2068.)

Exchange of Securities (No. 2) Rules, 1951. (S.I. 1951 No. 2078.)
Fife Fire Area Administration Scheme No. 2 Order, 1951. (S.I. 1951 No. 2073 (S. 103).)
Hill Cattle (Scotland) Scheme, 1951. (S.I. 1951 No. 2059 (S. 101).)
Hill Cattle Subsidy Payment (Scotland) Order, 1951. (S.I. 1951 No. 2060 (S. 102).)
Hill Sheep (Northern Ireland) Extension Scheme, 1951. (S.I. 1951 No. 2132.)
Draft **House of Commons** (Redistribution of Seats) (Bristol, North Somerset and Weston super Mare) Order, 1952.
Draft House of Commons (Redistribution of Seats) (Sunderland and Houghton-le-Spring) Order, 1952.
Linoleum and Printed Felt Base (Maximum Prices and Charges) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 2111.)
Liverpool-Warrington-Stockport-Sheffield-Lincoln-Skegness Trunk Road (Bordhill Diversion) Order, 1951. (S.I. 1951 No. 2088.)
Milk (Control and Maximum Prices) (Great Britain) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 2065.)
Milk (Control and Maximum Prices) (Northern Ireland) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 2066.)
Morley Water Order, 1951. (S.I. 1951 No. 2070.)
Motor Vehicles (Construction and Use) Regulations, 1951. (S.I. 1951 No. 2101.)
National Health Service (General Dental Services) (Scotland) Amendment Regulations, 1951. (S.I. 1951 No. 2057 (S. 100).)
National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Amendment Regulations, 1951. (S.I. 1951 No. 2076.)
Oxford-Northampton-Stamford-Market Deeping Trunk Road (Hoppersford Bridge Diversion) Order, 1951. (S.I. 1951 No. 2086.)
Pensions (Polish Forces) Scheme (Extension) Order, 1951. (S.I. 1951 No. 2058.)
Draft **Prison** (Scotland) Rules, 1952.
Retention of Cables, Mains and Pipes Under and Over Highways (Rutland) (No. 2) Order, 1951. (S.I. 1951 No. 2090.)
Retention of Railway Across Highways (Shropshire) (No. 1) Order, 1951. (S.I. 1951 No. 2091.)
Stopping up of Highways (Bristol) (No. 2) Order, 1951. (S.I. 1951 No. 2096.)
Stopping up of Highways (Hampshire) (No. 8) Order, 1951. (S.I. 1951 No. 2056.)
Stopping up of Highways (Staffordshire) (No. 4) Order, 1951. (S.I. 1951 No. 2097.)
Stopping up of Highways (Wigtownshire) (No. 1) Order, 1951. (S.I. 1951 No. 2092.)
Swansea-Manchester Trunk Road (Abergwesyn Road and other Junctions Improvements) (Variation) Order, 1951. (S.I. 1951 No. 2087.)
Telephone Regulations, 1951. (S.I. 1951 No. 2075.)
Telephone (Revocation) Regulations, 1951. (S.I. 1951 No. 2074.)
Town and Country Planning (Development by Local Planning Authorities) Regulations, 1951. (S.I. 1951 No. 2069.)

NOTES AND NEWS

Honours and Appointments

The King has appointed Mr. E. M. HOLLAND, K.C., to succeed Mr. Justice Upjohn as Attorney-General of the Duchy of Lancaster and Attorney and Serjeant within the County Palatine of Lancaster.

The Right Hon. JOHN SELWYN BROOKE LLOYD, C.B.E., K.C., M.P., has been elected a Master of the Bench of Gray's Inn.

Mr. EDWARD MAUFE, R.A., has been elected an Honorary Master of the Bench of Gray's Inn.

The Hon. Mr. Justice SELLERS, M.C., has been elected Treasurer of the Honourable Society of Gray's Inn for the year 1952 in succession to the Hon. Mr. Justice MCNAIR, who has been elected Vice-Treasurer for the same period.

Mr. JOHN MAUDE, K.C., has been unanimously elected a Master of the Bench of the Middle Temple.

Mr. DOUGLAS ATKINSON has been appointed Official Receiver for the Bankruptcy District of the County Courts of Carlisle, Workington, Cockermouth, Whitehaven, Millom, Barrow-in-Furness, Ulverston and Kendal.

Mr. L. HENDERSON, Clerk to St. Neots Urban Council, has been elected President of the Huntingdonshire branch of the Nationa Association of Local Government Officers.

Personal Notes

Mr. Edward Scott, solicitor, of Macclesfield, was married on 24th November to Miss Beryl Smith, of Alderley Edge.

Miscellaneous

CENTRAL LAND BOARD

REBUILDING AND ENLARGEMENT "TOLERANCES"

The effect of paras. 1 and 3 of Sched. III to the Town and Country Planning Act, 1947, together with the Exemption Regulations (S.I. 1950 No. 1233), is to provide an exemption from development charge when buildings are rebuilt, enlarged by 10 per cent. (or by 7,500 cubic feet in the case of houses) or enlarged to a similar extent on rebuilding. The Central Land Board will treat as exempt any rebuilding or enlargement within these tolerances provided it takes place within the curtilage as it exists at the time the development takes place.

When the addition of land to the curtilage of a building results in a material change of use of that land, planning permission is required and a liability to development charge arises. Consent value for the purpose of assessing development charge in these circumstances will necessarily be affected by the principles set out above, especially if the curtilage without the additional land is not large enough to allow the carrying out of the full rebuilding and enlargement tolerances thereon.

REBUILDING—OTHER THAN DWELLING-HOUSES

Third Schedule Rights

The Central Land Board will regard the Third Schedule to the Town and Country Planning Act, 1947, as permitting a single building, other than a dwelling-house, to be rebuilt free of development charge as two or more buildings which together comprise not more than the cubic content of the original building, plus any available enlargement tolerance.

Where such a building, or its foundation site, is sold in two or more parts, the purchaser of any part will therefore have the right (provided it has not already been exercised) to rebuild free of development charge on his land a building not larger in cubic content than that part of the original building which formerly stood upon it, plus any available tolerance.

The Lord Chancellor's Committee on Civil Liability for Damage done by Animals will consider representations on the amendment of the law relating to civil liability for damage caused by animals, and in particular on the following subjects: (1) the escape of cattle; (2) liability for injury to persons or things caused by animals; (3) nuisance caused by animals; (4) distress damage feasant. Interested persons and bodies should send their representations in writing to the Assistant Secretary, Mr. K. M. Newman, Lord Chancellor's Department, House of Lords, S.W.1, not later than 10th January, 1952. Criminal law, including law of cruelty to animals, is outside the Committee's terms of reference.

COUNTY BOROUGH OF BARROW-IN-FURNESS DEVELOPMENT PLAN

The above development plan was, on 12th November, 1951, submitted to the Minister of Housing and Local Government for approval. It relates to land situated within the county borough of Barrow-in-Furness. A certified copy of the plan as submitted for approval may be inspected from 9 a.m. to 5.30 p.m., Monday to Friday, at the office of the Borough Engineer and Surveyor, Town Hall, Barrow-in-Furness. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 25th January, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the said county borough of Barrow-in-Furness, and will then be entitled to receive notice of the eventual approval of the plan.

COUNTY COUNCIL OF THE PARTS OF HOLLAND, LINCOLNSHIRE, DEVELOPMENT PLAN

The above development plan was, on 30th November, 1951, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County of the Parts of Holland, Lincolnshire, and comprises land within the under-mentioned districts. A certified copy of the plan as submitted for approval may be inspected from 9.30 a.m. to 5 p.m. (Saturdays 9.30 a.m. to 12 noon) at the office of the County Planning Officer, 21, Haven Bank, Boston. Certified copies or extracts of the plan so far as it relates to the under-mentioned districts may also be inspected at the same times at the places mentioned below :—

Boston Rural District : Council Offices, 126, London Road, Boston.

East Elloe Rural District : Council Offices, Mattimore House, Holbeach.

Spalding Rural District : County Planning Offices, Harrington House, Broad Street, Spalding.

Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st January, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Holland County Council and will then be entitled to receive notice of the eventual approval of the plan.

Wills and Bequests

Mr. E. W. Woods-Davey, solicitor, of Lincoln's Inn, left £32,638 (£32,472 net).

Mr. S. G. Burge, solicitor, of Newport, Mon., left £37,921 (£37,683 net).

OBITUARY

MR. G. J. BRACEY

Mr. Geoffrey John Bracey, solicitor, of Yarmouth, died on 6th December, aged 62. Admitted in 1909, he was clerk to Yarmouth magistrates for many years and had been Borough Coroner since 1946.

MR. H. D. DARBISHIRE

Mr. Harold Dukinfield Darbishire, retired solicitor, of Goring-on-Thames, who formerly practised in Liverpool, has died at the age of 70. He was admitted in 1908 and retired seven years ago, devoting his time to social work, mainly in Reading.

MR. W. S. ROTHERA

Mr. Wilfred S. Rothera, solicitor, of Nottingham, died on 3rd December, aged 69. He was admitted in 1904 and had been City Coroner since 1934. He was Secretary to the Nottingham Law Society from 1922–27 and President in 1937.

SOCIETIES

THE SOLICITORS' ARTICLED CLERKS' SOCIETY

Articled clerks and their guests are invited to a Carol Singing at a secret rendezvous on 19th December. Meet at Lyons' Corner House, Marble Arch (foyer), at 6 p.m., or at Odeon Cinema, Marble Arch, at 6.30 p.m. Evening finishes at 8 p.m. Money collected to go to the National Society for the Paralysed.

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION ANNUAL FESTIVAL DINNER, 1951

The thirty-seventh annual festival dinner was held on Thursday, 29th November, 1951, at the Connaught Rooms, London, W.C.2. The President, Mr. Arthur Bird, was in the chair, accompanied by Mrs. Bird.

The Right Hon. Lord Oaksey was the principal guest, accompanied by Lady Oaksey.

This dinner was the most successful in the history of the Association, no less than 541 members, guests and visitors being present. After the loyal toasts had been honoured, Lord Oaksey proposed the toast of "The Association," and in doing so commented on the problem of judicial dress which arose at the opening of the Nuremberg Trials. Wigs such as are worn in England were unknown on the continent, and in America no formal court dress at all is worn, but representatives of each country participating in the trial had certain ideas and ultimately compromise was effected, and they all appeared in military uniform.

In responding to the toast, Mr. Arthur Bird referred to the continued increase in membership of the Association and to the creation of fresh branches. The council of the Association had been invited by The Law Society to participate in considering how to stimulate the recruitment of juniors into the profession. The education scheme which was administered by a joint committee of the Association and The Law Society was now regularly holding two examinations a year, and some 1,200 applications for managing clerks' certificates without examination had been adjudicated upon by the Association's sub-committee of three vice-presidents. The Law Society had a few of the latest applications before them. The closing date in normal cases was the 1st January, 1951. He paid a tribute to the enormous work undertaken by the Association's vice-presidents in scrutinising these applications and to the honorary secretary of examinations for his work in connection therewith.

The council of the Association was devoting its attention to the further education of solicitors' clerks and endeavouring to get more facilities provided for courses which would assist intending managing clerks to pass the examinations for managing clerks' certificates. He felt that with more settled prospects in view, junior clerks were more likely to settle down to their chosen occupation.

The Association was already doing great work by continuing to provide lectures by experienced members of the council to junior clerks on Monday evenings in the Lord Chief Justice of England's Court.

Mr. Bird announced that the second national conference of the Association would be held at Bournemouth on 7th June, 1952. The Bournemouth Branch had set up a committee which had arrangements well advanced, and the civic authorities had intimated that a civic reception would be accorded to the Association's members and friends attending the conference.

The circulation of the Association's official gazette was steadily increasing, and the central library had still further improved. Upwards of 2,700 books, including copies of all the latest text books, were available for members.

Mr. D. N. Pritt, K.C., proposed the toast of "His Majesty's Judges," adding that he knew most of them quite well, although their number had been increased, as many were junior to him in point of call and at least one or two, who should be nameless, had been his pupils.

The Hon. Mr. Justice McNair responded to this toast, and likened the legal profession to a pyramid, with the judiciary at the top and solicitors and their managing clerks forming the broad base upon which the structure rested.

Mr. G. A. Collins, B.A., LL.B., President of The Law Society, then proposed the toast of "The Legal Profession." He welcomed Sir Lionel Heald, K.C., M.P., H.M. Attorney-General, without in any way being political, and expressed the hope that he would enjoy a long tenure of that office.

The Rt. Hon. Sir Lionel Heald, K.C., M.P., H.M. Attorney-General, responded to the toast.

The Rt. Hon. Sir Lynn Ungoed-Thomas, K.C., M.P., also replied.

The toast of "The Ladies and Guests" was proposed by the Hon. Mr. Justice Havers, and Mr. E. Milner Holland, C.B.E., K.C., responded.

The toast of "The Chairman" was proposed by Mr. F. T. Adams, who said that he had known Mr. Bird for many years and had for a long time worked with him. Though only recently a member of the Council, Mr. Bird had soon made his weight felt as a committee man. He was pleased to welcome him as President of the Association, a difficult post which he had filled in an able and conscientious manner.

The President suitably responded and thanked Mr. Adams for the proposal.

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